



COMMONWEALTH of VIRGINIA

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The Honorable R. Edward Houck
Member, Senate of Virginia
P.O. Box 7
Spotsylvania, Virginia 22553

Dear Senator Houck:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask about the practical meaning of § 46.2-856, which prohibits passing or attempting to pass two other vehicles abreast, moving in the same direction.

Response

It is my opinion that § 46.2-856 prohibits the passing or overtaking of two vehicles traveling "abreast," *i.e.* side by side, unless one of the exceptions applies.

Applicable Law and Discussion

Section 46.2-856 provides, in pertinent part, that:

A person shall be guilty of reckless driving who passes or attempts to pass two other vehicles abreast, moving in the same direction, except on highways having separate roadways of three or more lanes for each direction of travel, or on designated one-way streets or highways.

Section 46.2-856 targets an especially dangerous type of passing. Danger always is present when one vehicle passes another by moving into a lane of travel used by oncoming traffic. There is an additional risk when passing two vehicles that are traveling abreast on highways with less than three lanes for travel in each direction. One of the two vehicles traveling abreast might move into the lane that the passing vehicle anticipates using after completing the passing maneuver. If this happens, the vehicle that is passing may be forced to remain in the lane used by oncoming traffic, thereby presenting a greater risk of a collision from oncoming traffic. It also is more difficult for the passing vehicle to track two vehicles traveling abreast than it is to monitor a single vehicle.

In my opinion, § 46.2-856 must be interpreted according to its plain language.¹ First, the statute prohibits “pass[ing]” or “attempt[ing] to pass.” These terms have a readily understood meaning.² Second, the driver must pass or attempt to pass two vehicles that are “abreast.”³ It is my opinion that the individual must be passing or attempting to pass vehicles that are side by side in two different lanes as opposed to vehicles in single file in a single lane.⁴ Third, the vehicles that are being overtaken must be moving in the same direction.⁵

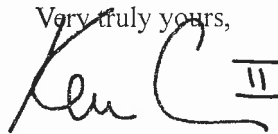
Section 46.2-856 does not apply in two situations. First, it does not apply when a highway has three or more lanes for each direction of travel. In that instance, there cannot be a reckless driving violation because the driver may safely pass the two vehicles that are “abreast” without entering into a lane of travel used by oncoming traffic. Second, § 46.2-856 does not apply when there are “designated one-way streets or highways,” presumably because there is no risk of the vehicle colliding with oncoming traffic.

Conclusion

Accordingly, it is my opinion that § 46.2-856 prohibits the passing or overtaking of two vehicles traveling “abreast,” *i.e.* side by side, unless one of the exceptions applies.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ken Cuccinelli II', with a stylized flourish at the end.

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-033

¹In interpreting statutes, one is “bound by the plain meaning of the words used, ‘unless a literal interpretation would result in a manifest absurdity.’” *Dowling v. Rowan*, 270 Va. 510, 519, 621 S.E.2d 397, 401 (2005) (quoting *Horner v. Dep’t of Mental Health*, 268 Va. 187, 192, 597 S.E.2d 202, 204 (2004)).

²The term “pass” means “to move past another vehicle going in the same direction: overtake.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1649 (1993) [hereinafter “WEBSTER’S”].

³VA. CODE ANN. § 46.2-856 (2005).

⁴The term “abreast” simply means “beside one another with bodies in line <four cars standing [abreast] so as to block the street>.” WEBSTER’S, *supra* note 2, at 5.

⁵*See* § 46.2-856.